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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Determine *Dyssodia tephroleuca* (Ashy Dogweed) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines a plant, *Dyssodia tephroleuca* (ashy dogweed), to be an endangered species under the authority contained in the Endangered Species Act of 1973, as amended. Historically, this plant was known from two counties in Texas. As of 1979, it was known to occur only on 1 acre in Zapata County, Texas. It is a relict species found in an area with other relict grassland plants. The continued existence of this species is endangered by overgrazing, possible further loss of habitat by roadside blading and brush clearing, and by possible collecting or vandalism. This action implements the protection provided by the Endangered Species Act of 1973, as amended.

DATE: The effective date of this rule is August 20, 1984.

ADDRESSES: The complete file for this rule is available for inspection by appointment during normal business hours at the U.S. Fish and Wildlife Service, Region 2, Office of Endangered Species, 421 Gold Avenue, SW., Room 407, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Dr. Jim Johnson, Region 2 Endangered Species coordinator (see ADDRESSES above) (505/766-3972, FTS 474-3972).

SUPPLEMENTARY INFORMATION:**Background**

Dyssodia tephroleuca was first collected by E. L. Clover in 1932, and described by S. F. Blake in 1934. *Dyssodia tephroleuca* (ashy dogweed) was historically known from two populations in southwestern Texas. Only one of these populations is known to exist at the present time.

Approximately 1,300 individuals occur in this population, which is located in Zapata County, Texas (Turner, 1980).

Dyssodia tephroleuca is a perennial herb with stiff erect stems up to 30 centimeters in height (Correll and

Johnston, 1970). The leaves are linear and covered with soft, woolly, ashy-white hairs. Crushed leaves emit a pungent odor. The flower heads (both ray and disk florets) are yellow to bright yellow and about 2.5 centimeters in diameter. In poorer habitats or under physiological stress, individuals are shorter, have fewer and smaller flowers, and have a less dense covering of hairs. Flowering is from March to May, depending on rainfall. The plants occur in fine, sandy-loam soils in open areas of a grassland-shrub community. The dominant genera in the area are *Castela*, *Cordia*, *Prosopis*, *Microrhamnus*, *Leucophyllum*, *Cercidium*, and *Yucca*.

The continued existence of this plant is primarily threatened by further reduction of its only known extant population. This population is mainly on private land but also lies partially on State highway right-of-way. Overgrazing and habitat loss due to grazing, chaining, plowing, or other habitat modifications could threaten *Dyssodia tephroleuca*. Taking and vandalism of this plant are also very real threats as this plant occurs along a major north-south highway.

Past Federal governmental actions affecting this plant began with section 12 of the Endangered Species Act of 1973 which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Director published a notice in the *Federal Register* (40 FR 27823) of his acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) of the Act (section 4(b)(3)(A) now and of his intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the *Federal Register* (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975, *Federal Register* publication. *Dyssodia tephroleuca* was included in the July 1, 1975, Notice of Review and the June 16, 1976, proposal. General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, *Federal Register* publication (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all

proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals which had expired (44 FR 70796). *Dyssodia tephroleuca* was included in category 1 of a revised list of plants under review for threatened or endangered classification in the December 15, 1980, *Federal Register* (42 FR 82480). Category 1 includes those taxa for which the Service presently has sufficient biological information to support their being listed as endangered or threatened species. The Service published a proposed rule to list *Dyssodia tephroleuca* as an endangered species on July 22, 1983 (48 FR 33501).

Summary of Comments and Recommendations

In the July 22, 1983, proposed rule (48 FR 33501) and associated notifications, all interested parties were requested to submit factual reports or information which might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in *The Monitor* in McAllen, Texas, on August 23, 1983, which invited general public comment. A total of five written comments were received, one each from the National Park Service, the U.S. Soil Conservation Service, the Texas Parks and Wildlife Department, the International Union for the Conservation of Nature and Natural Resources, and a professional botanist. No public hearing was requested or held.

The Texas Parks and Wildlife Department submitted comments in support of the proposal. They also pointed out that under Chapter 88 of the Texas Parks and Wildlife Code, any Texas plant which is placed on the Federal list as endangered is also required to be added to the Texas State list of endangered species. Thus, this rule will provide both State and Federal protection for *Dyssodia tephroleuca*.

Support for this proposal was also given by the U.S. Soil Conservation Service and by Mr. Harold Beaty, a professional botanist and the leader of the Texas Plant Recovery Team. Neither the National Park Service nor the International Union for the Conservation of Nature and Natural Resources had any substantive comments on the proposal.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Dyssodia tephroleuca* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 Amendments—see proposal at 48 FR 36062, August 8, 1983) were followed. A species may be determined to be an endangered or a threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Dyssodia tephroleuca* Blake (ashy dogweed) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Dyssodia tephroleuca was historically known to occur in two counties in southwestern Texas. Today it is known to exist at only one site in Zapata County. It occurs with other relict grassland species and is subject to heavy grazing pressure. At present, the most immediate threat to the range of this species is from clearing more land for grazing and cultivation.

Currently, approximately 1,300 individuals of this species are known to exist. Approximately 300 plants occur on the west side of the highway, on the State highway right-of-way, and on adjacent private ranchland. On the east side of the highway is a larger group, estimated at 500–1,000 plants. These are on private ranchland in a brushy area currently used for grazing and deer hunting. Adjacent land to the east has been chained recently and no *Dyssodia tephroleuca* were observed in this area. Protection plans need to be developed so that roadside maintenance is done in a way compatible with the continued existence of the *Dyssodia* located on the highway right-of-way.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

It is believed that the disclosure of the one specific locality of *Dyssodia tephroleuca* would further endanger the species continued existence. Taking and vandalism of this easily accessible roadside plant could result if attention were focused on it by the designation of critical habitat.

C. Disease or Predation

In the past, grazing has severely reduced the habitat of this plant. Undisturbed climax grassland now persists in southwestern Texas only as scattered remnants.

D. The Inadequacy of Existing Regulatory Mechanisms

The State of Texas currently has no law protecting *Dyssodia tephroleuca*. However, once the species is added to the Federal list of endangered species, Chapter 88 of the Texas Parks and Wildlife Code requires that it also be added to the Texas list of endangered species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The species biology of *Dyssodia tephroleuca* is not well understood, but there is evidence of poor reproductive capability as seedlings and newly established plants appear to be absent. The limited number of individuals in the one existing population make the species vulnerable to natural factors which could lead to its extinction. Natural successional changes in the grassland-shrub mosaic, microclimatic parameters, degree of success in reproductive mechanisms, and identity of pollinators are but a few of the unknown aspects of the species biology that need to be studied before the reasons for the decline can be understood and hopefully reversed.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Dyssodia tephroleuca* as endangered. Endangered as opposed to threatened status is appropriate because of the severely limited range of the species and the resulting vulnerability to any disturbance of its habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Dyssodia tephroleuca* due to its very restricted geographical distribution and its easy accessibility. Listing of a plant species as endangered publicizes its rarity and hence can make it attractive to collectors of rare plants and researchers, as well as vandals. Publication of critical habitat maps in the Federal Register is required when

critical habitat is designated. Since the only site known to exist for this species is bisected by a major highway, publication of such maps would greatly increase the possibility of taking or vandalism of the plants. Because these plants are located on non-Federal lands, such actions would not be prohibited by the Endangered Species Act. Therefore, it would not be prudent to bring further attention to the one site where this species occurs via critical habitat designation.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(A)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species. If a Federal action may affect a listed species, the responsible Federal agency must enter into consultation with the Service. The impact of section 7 on this species would probably be minimal as there are no known Federal lands, activities, or involvement in the area where *Dyssodia tephroleuca* occurs.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Dyssodia tephroleuca* all trade prohibitions of section 9(a)(2) of the Act, as implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to

import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. International and interstate commerce in *Dyssodia tephroleuca* is not known to exist. It is not anticipated that many trade permits involving plants of wild origin would ever be issued since this plant is not common in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. This new prohibition would now apply to *Dyssodia tephroleuca* if populations were found on Federal lands. No such populations are known to exist on Federal lands at present. Permits for exceptions to this prohibition are available through Section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment.

Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1903). It is anticipated that few taking permits for the species will ever be requested.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

- Blake, S.F. 1935. New Asteraceae. *Journal of the Washington Academy of Sciences* 25:320-321.
- Correll, D.S., and M.C. Johnston. 1970. *Manual of the Vascular Plants of Texas*. Texas Research Foundation, Renner, Texas. xiii + 1881 pp.
- Turner, B.L. 1980. Status Report: *Dyssodia tephroleuca* Blake. Prepared for the Office of Endangered Species, U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 5 pp.

Authors

The authors of this rule are Ms. Sandra Limerick and Ms. Rosemary H. Carey, Endangered Species staff, U.S.

Fish and Wildlife Service, Department of the Interior, P.O. Box 1306, Albuquerque, NM 87103. Status information was provided by Dr. B. L. Turner, University of Texas, Austin, Texas.

Ms. E. LaVerne Smith of the Washington Office of Endangered Species served as editor.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order, under Asteraceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

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(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
ASTERACEAE—Aster family:						
<i>Dyssodia tephroleuca</i>	Ashy dogweed	U.S.A. (TX)	E		NA	NA

Dated: July 3, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

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